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July 20, 2006

Attorneys for Parties Serving
Proposition 65 Notices of Violation

RE: Proper Documents to be Included with Proposition 65 Notices of Violation

Dear Counsel:

This letter is being provided to all attorneys who have served the Attorney General with notices of violation under Proposition 65 since January 1, 2005 (and some others), in order to remind all concerned of the proper documents to be included with such notices. Compliance with these requirements serves the purposes of the law and helps avoid disputes concerning the notices. This letter is not intended to address issues concerning the exact content of such notices, but only to assure that the documents reach the Attorney General with all necessary elements included.

There are two sets of regulations that affect the content of the notices. The regulations of the Office of Environmental Health Hazard Assessment ("OEHHA"), are set forth in California Code of Regulations, at Title 22, section 12903. The regulations of the Attorney General governing the Certificate of Merit are set forth in California Code of Regulations at Title 11, section 3100-3103. Based on these requirements, a notice should include the following documents:

1. The actual text of the notice, including the information required by California Code of Regulations, title 22, section 12903(a).
2. A proof of service identifying "the time, place, and manner of service and each of the parties upon which the notice was served." (Cal.Code Regs., tit. 22, § 12903(b)(2).)
3. The Summary of Proposition 65 set forth in Exhibit A to section 12903 must be served on the alleged violators, but "need not be included in the copies of notices sent to public enforcement agencies." (Cal. Code Regs., tit. 22, § 12903(b)(1).) You may find that it is more convenient to simply include the Proposition 65 summary in all copies of the notices, both to simplify the duplication process and to provide evidence that the Proposition 65 summary was served on the alleged violators. We do not object to receiving that additional document.
3. Where the notice alleges a violation of the warning requirement (Health & Saf. Code § 25249.6), a Certificate of Merit, meeting the requirements of the regulation. (Cal. Code Regs.,

tit. 11, § 3103, 3101.)

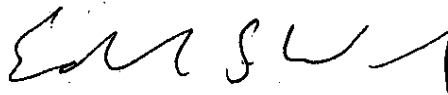
4. Where the Certificate of Merit requirement applies, the copy served on the Attorney General must include supporting documentation required by the statute and regulation. (Cal. Code Regs., tit. 11, § 3102.)

When notices are received, all portions of the notice except for the supporting documentation required by Cal. Code Regs., tit. 11, § 3102 are public information and are both made available on request and posted on the Attorney General's website. The supporting documentation is protected from public disclosure pursuant to Evidence Code section 1040. (Health & Saf. Code § 25249.7(i).) In some instances, the Certificate of Merit, which is a public document, includes certain facts that are not necessary to the Certificate itself, but which could have been included only in the protected supporting documentation. In those instances, the Certificate of Merit nonetheless remains a public document for all purposes.

We specifically note that the regulations also provide that where a Certificate of Merit is required, "[a] second copy of the entire notice and Certificate of Merit shall be served on the Attorney General, clearly marked 'Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040' and shall attach all supporting documentation required by Section 3102." (Cal. Code Regs., tit. 11, § 3100.) This regulation has been in effect since January 17, 2003, and is intended to make it easier for the Attorney General to promptly post all public information, while assuring that the protected information is not publicly disclosed. In fact, however, many of the notices we receive do not comply with this requirement. Because failure to comply with the "separate copies" requirement deprives neither the Attorney General or any other recipient of the notices of any information to which they are entitled, we do not think failure to comply with it would preclude a noticing party from filing an action based on an otherwise valid notice. Nonetheless, we do not wish to see time and resources spent litigating such issues. More importantly, we have found over time that failure to comply actually does increase the burden on the Attorney General and increase the likelihood that information will inadvertently not be treated according to its proper status.

If you have any questions, please feel free to contact me.

Sincerely,



EDWARD G. WEIL
Supervising Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Attached Proof of Service

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Proposition 65 Notices of Violation**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1515 Clay Street, Suite 2000, P.O. Box 70550, Oakland, California 94612-0550.

On July 20, 2006, I served the attached **Proper Documents to Be Included with Proposition 65 Notices of Violation**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 20, 2006, at Oakland, California.

Esther McDonald
Declarant

Esther McDonald
Signature